

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpted testimony of

10 JAVIER RUBIO

11 I N D E X

12 EXAMINATION OF JAVIER RUBIO

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1 THE COURT: All right. Does the
2 Government have its next witness or evidence?

3 MR. BECK: Your Honor, the United States
4 calls Javier Rubio.

5 THE COURT: Let me see counsel up here at
6 the bench before we begin.

7 (The following proceedings were held at
8 the bench.)

9 THE COURT: All right. I have looked at
10 the statements. I think I'm inclined to think it's
11 going to satisfy all the requirements of the
12 co-conspirator statement with the exception of one
13 that I am going to need to hear a lot of evidence
14 in, and you've already agreed that you're going to
15 approach the bench before trying to get these
16 statements in, the ones that we're talking about in
17 this letter.

18 I think I'm not sure that it's been
19 established yet, from what I have seen, that Mr.
20 Mendez is a part of the conspiracy. So you're going
21 to have to really give me some evidence on that.
22 Certainly if he had the power to approve the death
23 and the murder and those sort of things, then I
24 guess I would think that that would be part of the
25 conspiracy, and you could ask him. But if all he's

1 got is maybe a negative, he could, like, veto or
2 something like that, I'm not sure that would make
3 him part of the conspiracy. You may have other
4 things there, but that's really what I'm going to be
5 focusing on.

6 So before you try to elicit any statements
7 that are in the letter, approach the bench and let
8 me see if I am satisfied -- that I'm convinced that
9 Mendez is part of the conspiracy. You were nodding
10 your head, yes, I'm focusing on the right issue.

11 MR. LOWRY: And there is one additional
12 one, Your Honor. There is this statement here.

13 THE COURT: Go ahead and speak up.

14 MR. LOWRY: There is a statement here that
15 sometime after the Molina murder that Mr. Rubio was
16 approached by Alex Munoz and Juan Mendez.

17 THE COURT: Let me see this. There was
18 one I didn't see. Yeah, I don't see that one as
19 coming in unless you've got some other statement.
20 Do you agree?

21 MR. BECK: I agree. I'm not eliciting
22 that statement.

23 MR. LOWRY: And the Mendez statement.

24 MR. BECK: So I'm not eliciting that
25 second statement, I think.

1 THE COURT: I don't think it's the second.

2 MR. BECK: The one that Mr. Lowry was just
3 talking about. I think Mr. Rubio will also testify
4 that Mr. Mendez was the shot-caller, he had to
5 approve the hit, and that if not all of the
6 shot-callers in that SNM pod, including Mr. Rubio
7 approved the hit, if one of them found out about it,
8 they would have stopped the hit, not knowing that it
9 was a valid hit.

10 THE COURT: Is the testimony just going to
11 be that he had a veto power, or is it going to be
12 that Mr. Mendez had to actually approve and say,
13 "Yes, go"?

14 MR. BECK: I don't know.

15 MR. LOWRY: Your Honor, can I just point
16 this out? If you look at this last statement, it
17 doesn't appear that Mr. Rubio was part of the
18 conspiracy. Because it says that they called the
19 hit without ever consulting Mr. Rubio. So I'm
20 questioning whether there is even a co-conspirator
21 statement if there is sufficient cooperation.

22 THE COURT: My memory is -- and I could be
23 refreshed on this -- but my memory is that we
24 established Rubio was a member of the conspiracy
25 back in the original James hearing.

1 MR. LOWRY: I don't think we did.

2 MR. BECK: I don't know. I think Mr.
3 Rubio's position would be just like Mr. Mendez'. So
4 I think this will also be -- we will see where it
5 goes.

6 THE COURT: Well, okay. You'll need to
7 establish that --

8 MR. BECK: Sure.

9 THE COURT: -- if my memory is wrong, but
10 I will say this. I have less concern about Rubio
11 being part of the conspiracy than I do Mendez.
12 Mendez is where I think the linchpin is.

13 MR. MAYNARD: On this point, Your Honor --

14 THE COURT: Yes.

15 MR. MAYNARD: There is an earlier 302
16 reflecting a statement by Mr. Rubio to the FBI where
17 he says he wasn't sure that Mendez was even involved
18 in the conspiracy or involved in the decisions. So
19 it raises the question, and Mendez is on your
20 witness list, I understand. So if that is to come
21 in, it should come in through Mendez. It looks like
22 bootstrapping a claim of the conspiracy statutes,
23 which is not independently shown. And of course, if
24 we do this in front of the jury, can you give the
25 jury another limiting instruction? This should not

1 be done through Rubio at this juncture.

2 MR. BECK: As I said, I'll approach the
3 bench before I get into any of these statements, if
4 the evidence does not play out the way I anticipate
5 it will. I understand it's inadmissible; it's not a
6 co-conspirator statement.

7 THE COURT: Does the fact that we have
8 this 302 -- does that give you some concern?

9 MR. BECK: It does.

10 THE COURT: It might get impeached. I'm
11 not trying to tell you how to try the case. But I
12 wonder from a tactical standpoint if it makes sense
13 to bring it through --

14 MR. BECK: Sure.

15 MR. MAYNARD: Even if the defense wins,
16 we've had to fight a defensive battle, and we
17 haven't gained anything. And it is --

18 MR. BECK: It is admissible once it's a
19 co-conspirator. So it doesn't matter it's coming in
20 through Rubio as opposed to Mendez. As I said, if
21 the evidence doesn't play out as I expect it to, I'm
22 not going to bring out that testimony.

23 THE COURT: Let's see how the cross goes,
24 and then we may have to revisit this. And I promise
25 we'll revisit it before.

1 MR. MAYNARD: There may be a juncture
2 where I'd like to cover these admissibility issues
3 outside the presence of the jury, because this is,
4 like, tiptoeing around them.

5 THE COURT: It's tough. It's tough. It
6 is. But I think we're doing okay.

7 MS. JACKS: Your Honor, on behalf of Mr.
8 Sanchez, we would object based on the arguments that
9 have just been made. I believe there is also a
10 statement of Carlos Herrera to Mr. Rubio. The
11 Government is intending --

12 MR. BECK: There is an admission.

13 MS. JACKS: This goes back to the issue
14 that I don't think we've settled. The Court has
15 decided, but I still have argument on it whether
16 it's appropriate at a joint trial to bring in
17 admissions of co-defendants that will serve to
18 corroborate informants in this case.

19 THE COURT: Yeah, well --

20 MS. JACKS: I don't think I actually have.
21 And I'd like to argue this before --

22 THE COURT: Look at Tennessee versus
23 Street, because the confrontation clause does permit
24 unfronted out-of-court statements to be used for
25 nonhearsay purposes. So I just think -- I know you

1 keep saying that, but I think that's just a loser.

2 MS. JACKS: I do have some arguments based
3 on Richardson versus Marsh.

4 THE COURT: Look at Tennessee versus
5 Street.

6 MS. JACKS: I'll preserve --

7 MR. MAYNARD: Our objection is preserved,
8 Your Honor.

9 THE COURT: You bet.

10 MS. ARMIJO: I'm assuming defense does not
11 object to correctional officers. I believe the U.S.
12 Marshals asked me to triple-check with the Court and
13 defense counsel. This will be our first witness
14 that is in custody. And so I believe the Marshal's
15 Office had corrections officers come and be by him,
16 and they will not be in suits. They will be in
17 their normal garb.

18 MR. MAYNARD: Is that necessary?

19 THE COURT: I thought y'all wanted this.

20 MS. ARMIJO: I thought you wanted this.

21 THE COURT: I thought y'all wanted this.

22 We agreed when we brought in these cooperators you
23 didn't mind the security being here. I think we've
24 decided this issue.

25 MS. JACKS: I thought we did decide.

1 MS. ARMIJO: I thought it was decided.
2 I'm making sure.

3 THE COURT: This isn't y'all's client.
4 This is their informants, and they're going to be
5 guarded.

6 MR. MAYNARD: They need an escort.

7 THE COURT: Seems like we decided that.
8 We decided this before. And to pull this back in
9 the middle of trial creates some real logistical
10 issues.

11 MS. BHALLA: I'm sorry, I think I
12 misunderstood.

13 MS. FOX-YOUNG: I wasn't here on Friday.

14 THE COURT: It was long before Friday.
15 This was decided, and you're going back on your word
16 as far as logistics. Everybody agreed for your
17 defendants we'd take great precautions. Everybody
18 else, we're going to bring them in in jump suits and
19 we've got guards.

20 MS. FOX-YOUNG: Are we going to have
21 several guards? How many guards are there going to
22 be?

23 MS. ARMIJO: I believe it was decided two.

24 THE COURT: Where are they going to be
25 positioned?

1 MS. ARMIJO: I believe right next to him.

2 THE COURT: Okay. Does that work?

3 MS. ARMIJO: And they are not in suits.

4 THE COURT: They're not in suits.

5 MS. FOX-YOUNG: For the record, I object.

6 I'm not going to back on my word, Judge. I don't
7 recall.

8 THE COURT: You are. Everyone else in
9 agreement?

10 MS. JACKS: Yes, we agreed on this before.

11 I have one more thing, and this is my
12 request to the Court, my objection to the admission
13 of the co-defendants' admissions be a continuing one
14 so I don't have to get up and state every time.

15 THE COURT: Sure. You probably need to
16 tell me you need a limiting instruction.

17 MS. JACKS: That would be my next
18 objection.

19 THE COURT: Tell me when you want it.

20 MS. DUNCAN: I would just join the
21 objection of Mr. Sanchez also as to the statements
22 of Rudy Perez, and we'd ask for the same thing --

23 THE COURT: All right.

24 MS. DUNCAN: -- and Mr. Herrera.

25 THE COURT: Just alert me when you want a

1 limiting instruction. I'll need a little help with
2 that.

3 MS. JACKS: The other thing I would
4 request, to the extent the Court gives the limiting
5 instruction, if it can set a range, like, say, "No,
6 this is admissible to everyone else." Do you know
7 what I mean? Because it's very different.

8 THE COURT: I'll try, but y'all help me.

9 MS. JACKS: Sure.

10 MS. DUNCAN: Thank you, Your Honor.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: All right. Mr. Rubio, if you
14 will come in and be seated, before you're seated, my
15 courtroom deputy, Ms. Standridge, will swear you in.
16 So if you'll raise your right hand to the best of
17 your ability there.

18 JAVIER RUBIO,
19 after having been first duly sworn under oath,
20 was questioned, and testified as follows:

21 THE CLERK: Please be seated. State and
22 spell your name for the record.

23 THE WITNESS: Javier Rubio.

24 THE COURT: Mr. Rubio. Mr. Beck.
25

1 DIRECT EXAMINATION

2 BY MR. BECK:

3 Q. Mr. Rubio, are you now or were you ever a
4 member of the Syndicato de Nuevo Mexico Prison Gang?

5 A. Yes.

6 Q. Are you now a member of the Syndicato de
7 Nuevo Mexico?

8 A. Yes.

9 Q. How long have you been a member of the
10 SNM?

11 A. Twenty-four years.

12 Q. Do you go by any other names besides
13 Javier Rubio?

14 A. AB.

15 Q. When were you brought into the SNM?

16 A. 1994.

17 Q. Where were you when you were brought in?

18 A. At the South facility in Santa Fe.

19 Q. And who were the SNM members who brought
20 you into the gang?

21 A. Tony Perez, and I can't remember the other
22 guy's name.

23 Q. And in 1994, why were you at the
24 Penitentiary of New Mexico?

25 A. I was there serving a sentence for murder.

1 Q. And what happened? What were the
2 circumstances?

3 A. During a burglary, I committed a murder.

4 Q. How old were you?

5 A. 18.

6 MR. BECK: Your Honor, I'm going to show
7 to defense and move to admit 253 A, which is Bates
8 No. 48480.

9 MS. JACKS: Can we please have the exhibit
10 number again, please?

11 THE COURT: 253 A. Any objection from the
12 Defendants?

13 MS. JACKS: No, Your Honor.

14 THE COURT: Not hearing any, then
15 Government's Exhibit 253 A will be admitted into
16 evidence.

17 (Government Exhibit 253 A admitted.)

18 BY MR. BECK:

19 Q. Mr. Rubio, is that a photograph of you?

20 A. Yes.

21 Q. And is that your back pictured below your
22 head on Exhibit 253 A?

23 A. Yes.

24 Q. What is that a tattoo of?

25 A. SNM.

1 Q. Can anyone just get an SNM tattoo inside
2 the prisons?

3 A. No. It has to be earned through violence.

4 Q. Have you ever heard the term "earning your
5 bones"?

6 A. Yes.

7 Q. What does that mean?

8 A. You have to murder someone.

9 Q. Is that the only way somebody can earn
10 your bones?

11 A. You can assault someone.

12 Q. How did you earn your bones?

13 A. I assaulted someone. I stabbed someone.

14 Q. When was that?

15 A. '94.

16 Q. Did you also stab -- and I want to be
17 clear on this. Was that assault in 1994 to gain
18 membership into the SNM?

19 A. Yes.

20 Q. When you were brought in in 1994, who was
21 the leader of the SNM?

22 A. Angel Munoz.

23 MR. BECK: Your Honor, I'm going to move
24 to admit Exhibit 253 B, and I'll show that picture
25 to the defense counsel.

1 Move to admit Exhibit 253 B, Your Honor.

2 THE COURT: Any objection from the
3 Defendants?

4 MR. LOWRY: No, Your Honor.

5 THE COURT: Not hearing any objection,
6 Government's Exhibit 253 B will be admitted into
7 evidence.

8 (Government Exhibit 253 B admitted.)

9 BY MR. BECK:

10 Q. Mr. Rubio, is that you pictured on the
11 bottom left, second from the left, in this
12 photograph?

13 A. Yes.

14 Q. And who is at the top left of that
15 photograph?

16 A. Angel Munoz.

17 Q. Is that Angel Munoz who was the leader
18 when you were brought into the gang?

19 A. Yes.

20 Q. Were there other leaders below Mr. Munoz?

21 A. Yes.

22 Q. Who was that?

23 A. Billy Garcia, Styx, Marty Barros. There
24 was various other ones.

25 Q. Was Julian Romero a leader at that time?

1 A. Romero was one, yes.

2 Q. Do you know Styx's real name?

3 A. No.

4 Q. Are you familiar with the defendant
5 sitting in the back of the courtroom, Anthony Ray
6 Baca?

7 A. Yes.

8 Q. At some point, was he the leader of the
9 SNM?

10 A. Yes.

11 Q. When was that?

12 A. When Angel got out in '99, 2000.

13 Q. And is Mr. Baca still the leader of the
14 SNM?

15 A. Yes.

16 Q. In your opinion, what's the purpose of the
17 SNM?

18 A. Control the prison system.

19 Q. And how does the SNM do that?

20 A. Through violence and extortion.

21 Q. Does the SNM interact in any way with
22 drugs in prison?

23 A. Yes.

24 Q. How do they do that?

25 A. Sell drugs, do drugs.

1 Q. If someone who is not an SNM member brings
2 in drugs into a pod that has SNM members, what
3 happens?

4 A. They have to give SNM drugs.

5 Q. If an SNM member brings in drugs into an
6 SNM pod, what happens?

7 A. He has to share it, as well.

8 Q. Have SNM members shared drugs with you
9 over the years?

10 A. Yes.

11 Q. What drugs?

12 A. Heroin, cocaine, marijuana.

13 Q. I want to talk to you about some of the
14 rules of the SNM. Is an SNM member allowed to
15 cooperate with law enforcement?

16 A. No.

17 Q. How is an SNM member admitted to the SNM?

18 A. He has to commit an act of violence.

19 Q. Does he also have to have certain SNM
20 members vouch for him or raise their hands for him?

21 A. Yes.

22 Q. How many?

23 A. Two or three.

24 Q. Has that always been consistent, or has
25 that changed over the years?

1 A. It's changed.

2 Q. Can someone with a sex offense in their
3 personal history be admitted?

4 MR. LOWRY: Objection, Your Honor, as
5 leading.

6 A. No.

7 THE COURT: Leading? Overruled.

8 BY MR. BECK:

9 Q. And Mr. Rubio, if there is an objection
10 like that, just hold your answer until afterwards.
11 Thank you.

12 Are there certain repercussions for
13 violation of these rules?

14 A. Yes.

15 Q. What are those?

16 A. Murder, get killed.

17 Q. Are there others?

18 A. You could get beat up.

19 Q. And what does that repercussion depend on?

20 A. It depends on the rules that are set, the
21 severity of the rule that you broke.

22 Q. What would be the most severe rule, in
23 your experience?

24 A. To snitch, to not commit an act of
25 violence when you're told to.

1 Q. What does "snitching" mean?

2 A. You tell on somebody.

3 Q. Do you just tell on someone to anyone
4 else, or are you telling on someone to specific
5 people?

6 A. To prison officials.

7 Q. Does the SNM have homemade weapons?

8 A. Yes.

9 Q. Are those shanks?

10 A. Shanks.

11 Q. How are shanks kept within an SNM pod?

12 A. Usually anybody could have them, but
13 sometimes there's people that are designated to hold
14 them.

15 Q. Does it depend on the pod you're in?

16 A. Yes.

17 Q. Do SNM members take their shanks into the
18 yard?

19 A. Yes.

20 Q. What's the yard?

21 A. It's a recreation yard where everybody
22 goes to.

23 Q. What happens if a non-SNM member has a
24 shank in the yard and the SNM finds out?

25 A. They want to know why he has it, if he's

1 trying to use it towards them, or anything of that
2 matter.

3 Q. What's a tabla?

4 A. It's a board of leaders.

5 Q. I should have asked a better question.
6 What's tabla with the SNM?

7 A. A certain group of people that have been
8 appointed to be leaders and make decisions.

9 Q. Does that include leaders of the pods at a
10 certain facility?

11 A. Yes.

12 Q. Did it include the leaders of the SNM pod
13 at the Southern New Mexico Correctional Facility in
14 2014?

15 A. Yes.

16 Q. Were you a member of that tabla?

17 A. I was.

18 Q. What happened if a member of the tabla
19 orders a hit and a member that they tasked to do
20 that doesn't perform?

21 A. He will be murdered.

22 Q. What happens if a member of a tabla gets
23 an order to order a hit and doesn't follow through
24 on that?

25 A. Same; he will be murdered.

1 Q. I think in 1994 you said you assaulted
2 someone to earn your bones?

3 A. Yes.

4 Q. Did you do that to maintain or gain more
5 of a reputation with the SNM?

6 A. Yes.

7 Q. In 1997 did you stab someone for the SNM?

8 A. Yes, I did.

9 Q. What happened?

10 A. I stabbed somebody who was considered an
11 enemy to the SNM.

12 Q. Why did you do that?

13 A. To earn my bones.

14 Q. How do you know if something is an SNM hit
15 or just a personal dispute?

16 A. Well, it has to be verified.

17 Q. What do you mean, "verified"?

18 A. It has to be verified through the leaders,
19 the people that are actually calling the hit. They
20 have to verify that it's a legit hit, whether
21 somebody, for whatever reason, he messed up or was
22 supposed to get hit.

23 Q. In 2002, did you participate in another
24 hit because of your membership in the SNM?

25 A. Yes.

1 Q. What was that?

2 A. It was on Frankie Gonzalez, because he had
3 been at another facility in which an SNM Gang member
4 had problems with somebody else, and he didn't do
5 anything to help that SNM Gang member.

6 Q. Why did that result in a hit on Frankie
7 Gonzalez?

8 A. Because he should have hit that guy, the
9 one who had started the problems with the SNM Gang
10 member.

11 Q. Is that a rule of the SNM?

12 A. Yes.

13 Q. And what did you do? What was your role
14 in that?

15 A. I made sure that somebody assaulted him.

16 Q. Did you call the hit?

17 A. Yes.

18 Q. That is what you were saying about
19 verifying earlier?

20 A. Yes.

21 Q. So you verified it?

22 A. I verified that he was there and didn't do
23 what he was supposed to do.

24 Q. Was there an earlier stabbing that you
25 participated in as an SNM member related to that

1 same incident?

2 A. Yes.

3 Q. And tell us about that.

4 A. The guy that disrespected SNM ended up in
5 the same pod I was living in. And I had him hit,
6 too, as well. I made the shank and --

7 Q. What did you make the shank out of?

8 A. A Scrabble board piece.

9 Q. What do you mean?

10 A. A Scrabble board comes with a little piece
11 of wood. I made a shank out of that.

12 Q. Is that the piece of wood where you hold
13 letters for the Scrabble?

14 A. Yes.

15 Q. And you made a shank out of that piece?

16 A. Yes.

17 Q. Is it fair to say that you received some
18 benefits for agreeing to cooperate with us in this
19 case?

20 A. Yes.

21 Q. Were you told -- the Government didn't
22 indict you in any of its SNM --

23 A. No.

24 Q. -- in this SNM case?

25 A. No.

1 Q. Did you ask Special Agent Acee to help
2 reduce your state sentence?

3 A. Well, I asked him if he could testify for
4 me at my parole hearing.

5 Q. Do you expect that he'll do that?

6 A. Yes.

7 Q. What do you have to do for him to do that?

8 A. Tell the truth.

9 Q. While you were in the Corrections
10 Department after you agreed to cooperate, were you
11 allowed more telephone calls than a regular Level 6
12 inmate?

13 A. Yes.

14 Q. Were you allowed more tier time than
15 regular Level 6 inmates?

16 A. Yes.

17 Q. Were you allowed contact visits even
18 though you're an SNM member?

19 A. Yes.

20 Q. Did you attend a pizza party?

21 A. Yes.

22 Q. But those benefits stopped?

23 A. Yes, they did.

24 Q. When did they stop?

25 A. When I got caught having sex with my wife.

1 Q. When was that?

2 A. January of 2017.

3 Q. Were you allowed to have sex with your
4 wife?

5 A. No.

6 Q. Why did you do that?

7 A. Human nature. I've been in prison 24
8 years.

9 Q. What happened to you after that?

10 A. I had to do nine months in solitary
11 confinement. I lost all my good time. I lost all
12 my privileges for a year.

13 Q. So you were reprimanded for that?

14 A. Yes.

15 Q. What does it mean to lose all of your good
16 time?

17 A. You earn one day for every day you do in
18 prison. You're able to work your way up to doing
19 half the time you have to do. I lost about 20 years
20 of it.

21 Q. How many years of good time did you lose?

22 A. About 20 years.

23 Q. Did you interact with Mr. Baca at the
24 Southern New Mexico Correctional Facility in 2008?

25 A. Yes.

1 Q. And I want to talk to you about when Mr.
2 Baca came down, what happened at Southern. Did he
3 want to put in place some kind of structure?

4 A. Yes, he did. He appointed --

5 Q. Hold on one second there. Did you have --
6 did you learn this in conversation with Mr. Baca?

7 A. Yes, I did.

8 Q. And did he -- were there other people
9 around when he was telling you this, or just you?

10 A. There was other people around.

11 Q. All right. So what did Mr. Baca want to
12 do when he came down to Southern in 2008?

13 A. He wanted to appoint certain people to run
14 the pods. He wanted to write out a set of rules for
15 people to follow and make sure that those people
16 that run the pods follow those rules.

17 Q. Do those people that run the pods report
18 to him?

19 A. Yes.

20 Q. And the jury saw some of the facilities
21 yesterday, and they saw a building that had three
22 different sets of cell blocks. When you're talking
23 about the pods, are you talking about the whole
24 building or each of those sets with cell blocks in
25 between?

1 A. Each of those sets. There was somebody
2 running those.

3 Q. So I think we heard that there is -- the
4 SNM facility there has a blue pod, a green pod, and
5 a yellow pod.

6 A. Yes.

7 Q. So each one of those pods would have a
8 leader or leaders?

9 A. Yes.

10 Q. How are those leaders chosen for each of
11 the pods?

12 MR. LOWRY: Objection, Your Honor. He's
13 asked and answered.

14 THE COURT: Overruled.

15 A. Everybody there has to vote who they
16 choose as a leader.

17 THE COURT: Are you okay, Ms. Jacks?

18 MS. JACKS: I'm fine. I was trying to
19 wait until Mr. Beck finished with what Mr. Baca
20 allegedly told this witness, and ask the Court for
21 the limiting instruction.

22 THE COURT: Mr. Rubio is going to make
23 some -- in his testimony, he's going to relate to
24 you some statements that he is testifying Mr. Baca
25 made. Again, you can use these statements only in

1 your deliberations regarding the charges against Mr.
2 Baca. You can't use them in any way against the
3 other three gentlemen in the courtroom.

4 All right, Mr. Beck.

5 BY MR. BECK:

6 Q. Just so we're clear, when you were talking
7 about the structure Mr. Baca put in place, putting
8 leaders in the pods, those were from conversations
9 that you had with Mr. Baca; right?

10 A. Yes.

11 Q. And now, I think you said people were
12 going to vote who they wanted to be a leader in each
13 of the pods?

14 A. Yes.

15 Q. Were you voted a leader for the green pod?

16 A. I was.

17 Q. Was there another leader for the green
18 pod?

19 A. Jesse Sedillo.

20 Q. When were you voted leader?

21 A. 2008.

22 Q. Were you still the leader in 2014, March
23 of 2014?

24 A. Yes.

25 Q. I want to talk to you about the rules that

1 you said Mr. Baca wanted to put in place. Did you
2 learn from Mr. Baca about a set of rules?

3 A. Yes.

4 Q. How did you learn from Mr. Baca about
5 these rules?

6 A. He had them written down on a piece of
7 paper. He wanted me to pass them around and let
8 everybody know the rules.

9 Q. Did Mr. Baca give you that piece of paper?

10 A. Yes.

11 Q. How did he do that?

12 A. He gave it to me so I could write it down.

13 Q. Where did you take that paper?

14 A. To my cell.

15 Q. Did you write it down?

16 A. Yes.

17 Q. Where did you write it down?

18 A. I wrote it down on a piece of paper in my
19 cell, returned it to him, and I had my own copy.

20 Q. And now I want to talk to you about some
21 of these rules that you learned specifically from
22 this piece of paper that you received from Mr. Baca.

23 MS. JACKS: And again, Your Honor, this is
24 limited to Mr. Baca?

25 THE COURT: It is.

1 MS. JACKS: I'll stop bringing that up.

2 THE COURT: Same instruction.

3 BY MR. BECK:

4 Q. What were the rules that Mr. Baca put in
5 place in 2008?

6 A. There was various ones. There was one
7 that pertained to anybody that is a snitch is to be
8 murdered. Anybody that does not want to carry out a
9 hit is to be murdered. There's -- we have to be
10 working out, exercise every day, and be ready to
11 fight or go to war with anybody.

12 Q. Was there a rule about people who had not
13 yet --

14 MR. LOWRY: Objection, Your Honor.
15 Leading the witness.

16 THE COURT: Overruled.

17 BY MR. BECK:

18 Q. Was there a rule about people who had not
19 yet, as you say, earned your bones?

20 A. Yes. They have to be prepared to do so.

21 Q. Any other rules you can think of?

22 A. No.

23 Q. Were there -- did this list of rules
24 include consequences for violating those rules?

25 A. Yes.

1 Q. What were some of those consequences?

2 A. Anything from being murdered to being
3 assaulted.

4 Q. And how did you know which consequences
5 would be doled out?

6 A. The rules were set to where the first
7 rules carry the highest consequences, then on down,
8 it was lesser.

9 Q. Thank you.

10 I want to talk to you about -- I want to
11 move away from Mr. Baca's statements and now talk to
12 you about when you were in the green pod at the
13 Southern New Mexico facility in July or August of
14 2013. Were you the leader of the pod at that time?

15 A. Yes.

16 Q. Did you learn -- did you see paperwork
17 come down on Mr. Molina?

18 A. I did.

19 Q. As an SNM member in that pod, what should
20 you do with -- what did this paperwork entail? Let
21 me ask that first.

22 A. It was him making a statement to the
23 police.

24 Q. I think you talked earlier about
25 snitching.

1 A. Yeah.

2 Q. Is that what you consider this paperwork?

3 A. Yes.

4 Q. As an SNM pod leader, what should happen
5 when you receive that paperwork?

6 A. I'm supposed to verify where it came from,
7 supposed to verify that it's legit, and make sure
8 that a hit is carried out.

9 Q. And who gave you that paperwork?

10 A. Jesse Sedillo.

11 Q. And don't tell me where, but did he tell
12 you where that paperwork came from?

13 A. Yes.

14 Q. And what did you do with that paperwork?

15 A. I told him I didn't want anything to do
16 with it. I told him if he wanted to, just throw it
17 away or...

18 Q. Why did you tell him that?

19 A. Because at that point I was already done
20 with SNM. I didn't want anything to do with it.

21 Q. Why were you done with the SNM?

22 A. I didn't agree with Pup's politics.

23 Q. What do you mean?

24 A. His politics were self-serving. He had no
25 loyalty to others.

1 Q. Why do you say that?

2 A. Because he would -- he would make enemies
3 of his own people.

4 MS. DUNCAN: I object.

5 THE COURT: Only need one attorney. Mr.
6 Lowry?

7 MR. LOWRY: Your Honor, this is hearsay
8 and speculation, it sounds like.

9 THE COURT: Why don't you tie it down
10 exactly where he's getting this information before I
11 allow it?

12 BY MR. BECK:

13 Q. Are these your personal thoughts of why
14 you didn't agree with Pup's leadership?

15 A. These are my personal thoughts and
16 feelings, yes.

17 Q. And I think you said you thought that he
18 was self-serving?

19 A. Yes.

20 MR. LOWRY: Objection, Your Honor. This
21 is 608.

22 THE COURT: Overruled.

23 BY MR. BECK:

24 Q. Had Mr. Baca ever, in your eyes, violated
25 the SNM rules?

1 A. Yes.

2 Q. What does "PC" mean?

3 A. Protective custody, requesting protective
4 custody.

5 Q. And what happens -- what are the SNM rules
6 generally about someone going to protective custody?

7 A. It's not allowed. Somebody that does that
8 generally will get stabbed or killed.

9 Q. And have people -- have SNM members gotten
10 a pass on that?

11 A. Yes.

12 Q. Did you ever confront Mr. Baca about your
13 issues with him?

14 A. Yes.

15 Q. And what did Mr. Baca say to you when you
16 confronted him?

17 A. He accused me of wanting his position. He
18 threatened me with violence.

19 Q. All right. Moving away from what he
20 said --

21 MS. JACKS: Again, Your Honor, would that
22 be limited?

23 THE COURT: Yes. So these statements that
24 Mr. Rubio is testifying that Mr. Baca made can only
25 be used in regard to Mr. Baca and not the other

1 three gentlemen.

2 Mr. Beck.

3 BY MR. BECK:

4 Q. Did you want Mr. Baca's position?

5 A. No.

6 Q. Were you already done with the gang at
7 that point?

8 A. Yes.

9 Q. I want to talk to you a little bit about
10 March of 2014. Was Juan Mendez one of the pod
11 leaders? Let me ask that a different way. Who are
12 the pod leaders of the SNM pods at the Southern
13 facility? Let's start with the blue pod. Who was
14 the leader of the SNM blue pod at that point?

15 A. Daniel Sanchez.

16 Q. Is Daniel Sanchez here in this room?

17 A. Yes.

18 Q. Where is he?

19 A. Right there.

20 Q. In the front room (sic) right here?

21 MR. BECK: Let the record reflect he
22 pointed to the defendant Daniel Sanchez.

23 THE COURT: The record will so reflect.

24 BY MR. BECK:

25 Q. Who were the leaders in the yellow pod at

1 that time?

2 A. Juan Mendez, Alex Munoz, and Carlos
3 Herrera.

4 Q. Is Carlos Herrera in this room?

5 A. Yes.

6 Q. Where is he? Back here behind me?

7 A. Yes.

8 Q. This counsel table in the back?

9 A. Yes.

10 MR. BECK: Let the record reflect he
11 pointed to the defendant Carlos Herrera.

12 THE COURT: The record will so reflect.

13 BY MR. BECK:

14 Q. Who were the leaders in the green pod at
15 this point?

16 A. Me and Jesse Sedillo.

17 Q. When paperwork comes down, I think you
18 talked about a hit needing to be verified?

19 A. Yes.

20 Q. Is that true for -- if you're going to
21 murder a snitch?

22 A. Yes, it is.

23 Q. Who needs to verify the paperwork before a
24 snitch is murdered at Southern New Mexico
25 Correctional Facility in March of 2014?

1 A. The leaders in those pods.

2 Q. Is that the six leaders you just told me
3 about?

4 A. Yes.

5 Q. If the paperwork comes down and one of
6 those leaders doesn't verify the paperwork -- or let
7 me ask this next question before I get there. Do
8 you actually have to verify the paperwork or do you
9 have to verify the hit?

10 A. You have to verify both. I have to verify
11 the hit. I have to verify who sent it, how it got
12 to me, and verify that the paperwork is legit.

13 Q. Now, after March of 2014, you were put on
14 lockdown status; is that right? And by "you," I
15 mean the SNM. Sorry.

16 A. Yes.

17 Q. At some point -- when you were on lockdown
18 with the SNM, could you have rec time?

19 A. Yes.

20 Q. How often did you have rec time?

21 A. Every day, Monday through Friday,
22 individual rec cages.

23 Q. What are the individual rec cages?

24 A. Just --

25 Q. Let me ask a better question than that.

1 You're talking about recreation.

2 THE COURT: Let me ask you this. Could we
3 maybe do this after the break? We've been going for
4 a while.

5 MR. BECK: Yes, Your Honor.

6 THE COURT: Let's be in recess for about
7 15 minutes. Did yesterday's pace and schedule work
8 for everybody? Everybody is sort of nodding. It
9 makes for a little shorter afternoon. So we're
10 going to be on that sort of schedule today and see
11 how it works. All rise.

12 (The jury left the courtroom.)

13 THE COURT: Y'all are covering up your
14 screen every time you come up here?

15 MR. CASTELLANO: The last time we put it
16 down. We are conscious of that now, Your Honor.

17 THE COURT: One thing on the jury
18 instruction, just be thinking of this. If you're
19 going to use the -- if we're going to use the drug
20 dealers or drug users who are less credible, we're
21 getting quite a group of witnesses here that they're
22 going to have some drugs. A, I'd like kind of know
23 probably from the defendants: Do y'all want that
24 instruction? And then B, y'all got to start giving
25 me a list of people who will be on that. Right at

1 the moment I'm not inclined to think these
2 co-conspirators --

3 MR. BECK: I'm not eliciting that
4 testimony, Your Honor. I agree.

5 THE COURT: There is one statement. I
6 don't know if it's worth anything to you, but that
7 one where --

8 MR. BECK: Your Honor, I don't know if
9 you're about to talk about Mr. Rubio's statement, if
10 maybe he should -- maybe he shouldn't be here for
11 this.

12 THE COURT: Okay.

13 MR. LOWRY: I would agree with that, Your
14 Honor.

15 THE COURT: All right. Okay. If you'll
16 just take him out, then.

17 (Mr. Rubio left the courtroom).

18 THE COURT: This is from the November 27
19 transcript. I guess it's page 151, filed 12/06/17,
20 docket 1545. I think you listed it in your order, I
21 guess, when -- if I remember how it was set up, I
22 guess Rubio was looking at the paperwork and he
23 goes, "Damn, this is it." It's just two sentences
24 in this report. I think that might be -- that might
25 be a present sense impression. So if that helps you

1 and you want it, I think that one might come in
2 without a co-conspirator.

3 All right. We'll be in recess for about
4 15 minutes, then.

5 (The Court stood in recess.)

6 THE COURT: All right. We'll go on the
7 record. Ms. Jacks?

8 MS. JACKS: Your Honor, I had a
9 conversation with Mr. Beck. I read Tennessee versus
10 Street. I'm aware of that case. What I was asking
11 Mr. Beck is if -- and I want to ask the Court -- if
12 we could take a few minutes and let me at least make
13 my argument to the Court before these statements
14 start flying in. I think we're maybe not
15 understanding each other. I feel like I have a
16 decent point, and I'd just like an opportunity to
17 have you think about it.

18 THE COURT: Go ahead.

19 MS. JACKS: The witness here --

20 THE COURT: I've got a jam between the
21 jurors coming in and there. So go ahead and make
22 the point.

23 MS. JACKS: Let me see if I can cut to the
24 chase. We're making an objection based on the Fifth
25 Amendment due process clause and the Sixth Amendment

1 confrontation clause regarding the admission of what
2 the Court is calling admissions of co-defendants
3 Perez and Herrera at the joint trial. Okay?

4 So my point is very simply this. To the
5 extent that a co-defendant says something happened
6 and that's inadmissible evidence against Mr.
7 Sanchez, that's also evidence that can be used by
8 the jury -- well, shouldn't be used by the jury, but
9 will be used by the jury to corroborate the
10 informant testimony against Mr. Sanchez.

11 The whole issue of the case as to Mr.
12 Sanchez is whether the informants are credible. So
13 anytime a co-defendant makes a statement, whether or
14 not it inculcates Mr. Sanchez by the content of the
15 statement, it's evidence that the jury is going to
16 have a very hard time not considering in evaluating
17 the credibility of the informant.

18 And I think much like the situation in
19 Jackson versus Denno, what's happening is
20 Mr. Sanchez is going to be tried, the credibility of
21 the Government's evidence against him is going to be
22 evaluated based on evidence that's inadmissible
23 against Mr. Sanchez.

24 And the problem with the limiting
25 instruction is, we've got the same jury considering

1 whether any of these defendants are guilty or not
2 guilty. But they're evaluating the credibility of
3 the same informants against all four defendants.

4 So I don't understand how a juror -- I
5 mean, a juror is not a computer. I don't understand
6 how a juror is supposed to consider Mr. Perez'
7 statements when evaluating the credibility of
8 informants testifying against Mr. Perez, but cannot
9 consider Mr. Perez' statements when evaluating the
10 credibility of the informants, the same informants
11 that are testifying against Mr. Sanchez.

12 And I think -- and I go back to my point
13 that Bruton, I believe, stands on two constitutional
14 legs: The Fifth and the Sixth Amendments. But
15 Jackson versus Denno very clearly stands on the
16 Fifth Amendment, and that law has not been
17 undermined. That holding has not been undermined at
18 all by the Supreme Court's decision in Crawford.

19 THE COURT: All right. You'll get my
20 opinion soon on this issue. I do think Richardson
21 versus Marsh answers your question. You got to make
22 your point.

23 All rise.

24 (The jury entered the courtroom.)

25 THE COURT: All right. Everyone be

1 seated.

2 All right, Mr. Rubio, I'll remind you that
3 you're still under oath.

4 THE WITNESS: Yes.

5 THE COURT: Mr. Beck, if you wish to
6 continue your direct examination of Mr. Rubio, you
7 may do so at this time.

8 BY MR. BECK:

9 Q. Mr. Rubio, I was looking over my notes
10 during the break. We talked about when you had sex
11 with your wife in the PNM; right?

12 A. Yes.

13 Q. That was against the regulations?

14 A. Yes.

15 Q. Did you know that was against the
16 regulations?

17 A. Yes.

18 Q. Your wife wasn't the only person in the
19 room, was she?

20 A. My granddaughter.

21 Q. How old is your granddaughter?

22 A. She was one year old at the time.

23 Q. I want to get back to the cages. We were
24 talking about the rec yard. So when you're on
25 lockdown, are you allowed to just go into the rec

1 yard, open and free?

2 A. No. You're escorted out there,
3 handcuffed, one at a time.

4 Q. And when you're escorted out there in
5 handcuffs, where do the correction officers put you?

6 A. Everybody -- just as you go out, they put
7 you in order in the cages.

8 Q. Okay. And the cages. That's what I want
9 to talk about. Can you describe how big the cages
10 are?

11 A. Maybe -- they're not very big. They're
12 probably ten feet by ten feet.

13 Q. That's ten feet wide, ten feet long, and
14 how high?

15 A. Maybe 15, 20 feet.

16 Q. And are they made out of metal?

17 A. Yes.

18 Q. How many inmates are in each cage?

19 A. One in each cage.

20 Q. And when you're on lockdown status, that's
21 how you have your rec time? Am I understanding that
22 correctly?

23 A. Yes.

24 Q. After the Molina murder, were you put in a
25 rec cage next to the defendant, Mr. Herrera?

1 A. Yes, I was.

2 Q. Did you and he talk about the Molina
3 murder? Did he tell you -- I mean, in your words --
4 this is your words --

5 MR. MAYNARD: Objection, leading, Your
6 Honor.

7 MR. LOWRY: And objection, hearsay.

8 THE COURT: Well, I'll overrule the
9 objection on leading.

10 MR. BECK: Your Honor?

11 THE COURT: Sorry, whose statement is
12 going to be solicited?

13 MR. BECK: Mr. Herrera's, and I think I
14 may lead during this point just --

15 THE COURT: All right.

16 MR. BECK: And I'll ask the Court's leave
17 to do so.

18 THE COURT: I'm going to allow a little
19 leeway to the Government on that.

20 And these statements can only be used
21 against Mr. Herrera, not against the other three
22 defendants. So if you're taking notes, you might
23 want to indicate that. But these statements can
24 only be used against Mr. Herrera.

25

1 BY MR. BECK:

2 Q. Did Mr. Herrera tell you that he called
3 the Molina murder?

4 A. Yes, he did.

5 MR. BECK: May I have a moment, Your
6 Honor?

7 THE COURT: You may.

8 MR. BECK: Pass the witness, Your Honor.

9 THE COURT: Thank you, Mr. Beck.

10 All right. Who would like to go first on
11 cross-examination? Mr. Maynard, are you going to go
12 first?

13 MR. MAYNARD: Thank you, Your Honor.

14 THE COURT: Mr. Maynard.

15 CROSS-EXAMINATION

16 BY MR. MAYNARD:

17 Q. Mr. Rubio, on direct examination, you
18 mentioned and described briefly some hits that you
19 participated in.

20 A. Yes.

21 Q. And you described sort of your description
22 of a hierarchy or a structure of SNM.

23 A. Yes.

24 MR. BECK: Your Honor, now that I'm in the
25 back, I realize I'm having a difficult time hearing

1 Mr. Rubio. So maybe if you can pull that microphone
2 closer.

3 THE COURT: Y'all will have to help him
4 there. There we go. Is that better, Mr. Beck?

5 MR. BECK: Yes, Your Honor, thank you.

6 THE COURT: Mr. Maynard.

7 BY MR. MAYNARD:

8 Q. Isn't it frequently a fact that inmates in
9 prisons have their own personal disagreements and
10 disputes?

11 A. Yes, they do.

12 Q. And they have their grudges and their
13 arguments with each other over things?

14 A. Yes.

15 Q. Because the living conditions are not very
16 pleasant, among other things?

17 A. Yes.

18 Q. And so things can happen where there is
19 always a question or a risk of arguments and fights,
20 a disagreement escalating into a fight?

21 A. Yes.

22 Q. And there is always a chance that a fight
23 will happen for personal reasons, which is
24 supposedly against SNM rules, if it's between
25 members?

1 A. Yes.

2 Q. So the person who engages in the assault
3 or the hit or whatever would want to disguise it as
4 an SNM hit. That happened?

5 A. I suppose so.

6 Q. You've seen it happen?

7 A. Yes.

8 Q. Now, you talked about verification.
9 The -- let me step back and ask you this question.
10 What's the difference between a llavero and a
11 shot-caller, if you know?

12 A. There is no difference.

13 Q. Okay. So what do they represent, if there
14 is no difference?

15 A. They're just two different ways of wording
16 it. But it's just somebody who's in a position to
17 make decisions.

18 Q. All right. Now, you mentioned decisions
19 are made in different pods and at different levels.

20 A. Yes.

21 Q. You were in the position to make decisions
22 in your pod.

23 A. Yes.

24 Q. Yours was the green one?

25 A. Yes.

1 Q. Now, the murder of Mr. Molina occurred in
2 a different pod, the blue pod?

3 A. Yes.

4 Q. And even farther away from your pod was
5 the yellow pod?

6 A. It was right next door.

7 Q. Oh, next door. Okay. So you could never
8 see what was going on in the blue or the yellow
9 pods?

10 A. No.

11 Q. So you'd have to rely on rumors to hear
12 about what was happening or to communicate --

13 A. That's why there are people put in place
14 to make those decisions.

15 Q. Right. And the communication is by rumor.
16 Well, by word-of-mouth.

17 A. Yeah, between those people.

18 Q. All right. Now, when you were describing
19 people who had positions of influence in the yellow
20 pod, you didn't mention a man by the name of Alex
21 Munoz?

22 A. Yes.

23 Q. Was he?

24 A. Yes.

25 Q. And so that means three people in the same

1 pod?

2 A. Yeah. People weren't voted on depending
3 on where you lived. It just -- people voted for a
4 certain amount of people to be a leader. It didn't
5 matter where you live.

6 Q. And then they can unvote them?

7 A. Yes.

8 Q. All right. But the procedures for that
9 are not very clearly laid out.

10 A. No.

11 Q. Okay. Now, in terms of this
12 investigation, when were you first asked questions
13 by any law enforcement officer about what happened
14 the day or the days before and after the Molina
15 murder?

16 A. Maybe within a couple of days of that.

17 Q. And in fact, later on in March of 2014,
18 this very same month that this happened, you were
19 questioned by authorities, state authorities?

20 A. Yes.

21 Q. And you basically said you were in the
22 shower and you knew nothing?

23 A. Yes. I don't know if I said I was in the
24 shower, but I said I knew nothing.

25 Q. Right. Later on -- and correct me if you

1 think I'm wrong -- in December of 2016 or at some
2 other date federal authorities came to talk to you
3 when you were in state custody. Do you remember
4 that conversation?

5 A. Yes.

6 Q. And in fact -- by the way, how many times
7 have you been questioned by federal authorities in
8 preparation for your cooperation today?

9 A. I'm not sure.

10 Q. Do you have a count of it?

11 A. No.

12 Q. Could you hazard an estimate of how many
13 times?

14 A. Maybe --

15 Q. Two or three times? Four or five times?

16 A. Maybe two or three times.

17 Q. That's it?

18 A. Yes.

19 Q. So over a year ago, they approached you
20 and asked you for your cooperation.

21 A. Yes.

22 Q. And now at that particular time they were
23 asking you for cooperation with respect to the
24 Molina murder, the Molina investigation; correct?

25 A. Yes.

1 Q. And you asked them for some benefit in
2 return if they could?

3 A. Yes.

4 Q. And one of the benefits you requested was
5 assistance in getting your state sentence lowered.

6 A. No.

7 Q. No?

8 A. No.

9 Q. Assistance in getting, perhaps, permission
10 to parole out sooner?

11 A. Not permission. Just to give a statement
12 and let them know that I cooperated with them at my
13 parole hearing.

14 Q. Oh. So your expectation was they couldn't
15 change your state sentence, but could perhaps
16 persuade the parole board to release you earlier.

17 A. Not to release me earlier. Just release
18 me on the day that I go before the parole board.

19 Q. And when were you expecting to go before
20 the board?

21 A. 2024.

22 Q. And you're hoping that date might be moved
23 up?

24 A. No. I'm expecting to go on the same day.

25 Q. So it will be 30 straight?

1 A. Yes.

2 Q. They don't have to release you on that
3 date, but you're hoping they will?

4 A. Yes.

5 Q. Now, did the authorities for the FBI talk
6 to you about your exposure to possible federal
7 prosecution?

8 A. No.

9 Q. Did they indicate to you that if you were
10 cooperative, the Government would not have a
11 pressing interest in prosecuting you for any federal
12 RICO violations?

13 A. No, they told me I wasn't a target.

14 Q. You weren't a target?

15 A. No.

16 Q. All right. So if there is a memo written
17 by Ms. Armijo relating to your statements and their
18 investigation indicating that the Government
19 indicated if you cooperated, they would have no
20 pressing interest in prosecuting you, that wouldn't
21 be correct?

22 A. Well, I was told that I wouldn't be
23 getting prosecuted; I wouldn't be targeted.

24 Q. Okay. Now, that particular day when you
25 first agreed to cooperate, you didn't say anything

1 in response to questions. You didn't even mention
2 Carlos Herrera's name, did you?

3 A. I don't remember if I mentioned it that
4 day.

5 Q. So if the reports of the investigators
6 indicate you said nothing about Carlos Herrera, you
7 don't have any dispute with that?

8 A. No, I did mention him. I just don't know
9 if I mentioned him that day.

10 Q. Okay. So maybe later on.

11 A. Yes.

12 Q. Okay. Then later on, you had additional
13 privileges, family visitation?

14 A. Yes.

15 Q. And of course, during one of those
16 incidents of family visitation is when it occurred
17 that you had oral sex with your wife?

18 A. Yes.

19 Q. In the same room with your infant
20 granddaughter.

21 A. Yes.

22 Q. And that resulted in a sanction and you
23 were at risk for losing quite a bit of good time.

24 A. Yes, I lost all of it.

25 Q. Now, you got tier-time privileges, in

1 addition, over and above what other inmates might
2 get; correct?

3 A. Yes.

4 Q. And you got extra telephone privileges?

5 A. Yes.

6 Q. All right. And later on, you gave
7 additional statements.

8 A. Yes.

9 Q. And for instance, with respect to the
10 incident after -- well, let me step back and ask it
11 this way. Were you put in custody with other people
12 who were also contemplating cooperating with the
13 federal investigation?

14 A. Briefly I was, for about two weeks.

15 Q. About two weeks? And that's when you were
16 taken out because of the visitation violation?

17 A. No, I was waiting to be sent to another
18 facility, which is people who are renouncing being
19 gang members.

20 Q. All right. Now, by the way, you don't
21 consider you're a gang member anymore.

22 A. I'm in the process of renouncing.

23 Q. You indicated that hits can involve
24 murders, but they can also involve just assaults?

25 A. Yes.

1 Q. And in fact, to a certain extent, they can
2 involve just extortions.

3 A. Yeah, there's extortions that happen, but
4 it's not considered a hit, I mean.

5 Q. In fact, you haven't been prosecuted in
6 connection with any activities involving SNM, have
7 you?

8 A. Yes, I have.

9 Q. Federally, I mean?

10 A. Federally, no.

11 Q. Okay. And you don't expect to be?

12 A. No.

13 Q. Although you indicated you participated in
14 such activities for which that might be possible.

15 A. Yeah.

16 Q. All right.

17 MR. MAYNARD: May I have a moment, Your
18 Honor?

19 THE COURT: You may.

20 MR. MAYNARD: No further questions.

21 THE COURT: Thank you, Mr. Maynard.

22 Mr. Lowry, do you have cross-examination
23 of Mr. Rubio?

24 MR. LOWRY: May we have a moment?

25 THE COURT: You may.

1 Do you want to go next, Mr. Jewkes? Is
2 this all right with you, Mr. Lowry, if Mr. Jewkes
3 goes?

4 MR. LOWRY: Yes, Your Honor.

5 THE COURT: Mr. Jewkes.

6 CROSS-EXAMINATION

7 BY MR. JEWKES:

8 Q. It's afternoon now. Good afternoon, Mr.
9 Rubio.

10 A. Good afternoon.

11 Q. Mr. Rubio, in response to questioning from
12 the prosecutor Mr. Beck, you indicated that your
13 first conviction was a murder conviction; is that
14 correct?

15 A. Yes.

16 Q. Where was that conviction obtained? In
17 what county?

18 A. Chaves County.

19 Q. Chaves County? Carlsbad.

20 A. Roswell.

21 Q. Roswell. Excuse me. Okay. And you told
22 us that that was a murder sentence for conduct
23 during a burglary.

24 A. Yes.

25 Q. What? A homeowner died? What was that

1 about?

2 A. Yes.

3 Q. Yes?

4 A. Homeowner died, yes.

5 Q. How was that homeowner killed?

6 A. With a tire iron.

7 Q. Okay. So it was a home invasion?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. That went bad?

12 A. Yes.

13 Q. And the homeowner was killed with a tire
14 iron?

15 A. Yes.

16 Q. And was that a male homeowner or a female
17 homeowner?

18 A. Female.

19 Q. You received a lengthy sentence for that,
20 I take it?

21 A. Yes.

22 Q. Life?

23 A. Life.

24 Q. And Mr. Rubio, have you obtained any other
25 felony convictions in this state, any other state,

1 or in any federal jurisdiction?

2 A. No.

3 Q. That's it?

4 A. I have one conviction for -- in the state
5 for tampering with evidence, and that's it.

6 Q. Okay. Now, that tampering with
7 evidence -- was that in connection with the
8 investigation in this case?

9 A. No.

10 Q. Another case?

11 A. Another case.

12 Q. Would that have been a homicide case?

13 A. No. It was assault with a weapon.

14 Q. Okay, sir. Out of what jurisdiction?
15 What county?

16 A. It was in Santa Fe.

17 Q. Santa Fe. All right, Mr. Rubio. You
18 explained to Mr. Beck about, to some extent, these
19 homemade weapons, shanks. You're familiar with what
20 a shank is. It's for all practical purposes a
21 homemade knife.

22 A. Yes.

23 Q. What are they made of?

24 A. Various wood, plastic, metal, sometimes
25 razor blades.

1 Q. But generally you prefer steel; right?

2 A. Yes.

3 Q. Because of its strength?

4 A. Yes.

5 Q. How do you make a shank?

6 A. There's different ways to obtain the
7 material, different ways to sharpen it. Usually
8 like on the concrete.

9 Q. Concrete?

10 A. Yes.

11 Q. So take some piece of steel, whatever
12 configuration it might be, whatever it might be, and
13 then you go to work on it on the concrete?

14 A. Yes.

15 Q. What kind of concrete? Sidewalk? Will
16 that do it, or do you need --

17 A. The entire prison is made of concrete.

18 Q. Okay. It's kind of slow, laborious work,
19 isn't it?

20 A. Not if you know what you're doing.

21 Q. How fast can you make a shank, Mr. Rubio?

22 A. Within hours.

23 Q. Hours, plural?

24 A. Yes.

25 Q. Say, like, more than two hours, three

1 hours?

2 A. I could make one within an hour.

3 Q. And you just run it back and forth over
4 the concrete?

5 A. Yes.

6 Q. You grind it, basically; is that correct?

7 A. Yes.

8 Q. And you can make a shank in, say, two
9 hours?

10 A. Yes.

11 Q. Where do you keep these shanks? By that I
12 mean, how do you keep guards from finding shanks?

13 A. Different places in the prison that you
14 can hide them. Out in the yard, in the recreation
15 yard. There's places where there are common areas.
16 Sometimes in cells.

17 Q. Are shanks readily available in the prison
18 system?

19 A. Yes.

20 Q. Why?

21 A. Because it's a place where -- I mean, it's
22 a violent mentality.

23 Q. A lot of violence?

24 A. Yes.

25 Q. Some political beefs and a lot of personal

1 beefs; yes?

2 A. Yes.

3 Q. If someone steals -- another inmate steals
4 your commissary, he's going to have to answer to
5 you, isn't he?

6 A. Yeah.

7 Q. Yes?

8 A. Yes.

9 Q. And you can have personal beefs over
10 women?

11 A. Yes.

12 Q. Or a possession as simple as a watch or a
13 book?

14 A. Yes.

15 Q. It does happen, does it not, Mr. Rubio?

16 A. Yes, it happens.

17 Q. It's not all political; it's not all gang
18 politics, is it?

19 A. It varies.

20 Q. You told Mr. Beck that you stabbed an
21 enemy of SNM.

22 A. Yes.

23 Q. That's how you earned your bones.

24 A. Yes.

25 Q. That was in 1997.

1 A. Yes.

2 Q. Did that kill him, or just take him out of
3 the game?

4 A. It wounded him. It didn't kill him.

5 Q. I'm sorry?

6 A. I wounded him, but I didn't kill him.

7 Q. Okay. He survived?

8 A. Yes.

9 Q. You picked up some more time for that;
10 correct?

11 A. Yes.

12 Q. By the way, what is your scheduled parole
13 date?

14 A. My first parole hearing is in March of
15 2024.

16 Q. 2024?

17 A. Yes.

18 Q. So you've got at least another six years
19 before you can be considered?

20 A. Yes.

21 Q. And you wanted the Government to kind of
22 come to your assistance, help you. This Government.

23 A. Just to, yeah, to testify on my behalf.

24 Q. Put in a good word for you.

25 A. Yes.

1 Q. Who do you want to do that? Which one?

2 Who do you want to --

3 A. The federal government.

4 Q. Which member of the federal government?

5 A. Anyone.

6 Q. Special Agent Acee?

7 A. Yes.

8 Q. What about these prosecutors here? Any
9 one of them? Do you want them to come to your aid,
10 say nice things about you?

11 A. Not say nice things about me. Just say
12 what I spoke.

13 Q. Okay. Well, when did you make the
14 decision to cooperate in this case? About how long
15 ago?

16 A. About a couple years ago.

17 Q. Two years ago?

18 A. Maybe, yeah.

19 Q. Not long after the indictments came down?

20 A. It was about a year after that, I think.

21 Q. Because we're talking about December 2015
22 when the indictment came down.

23 A. Yeah.

24 Q. So it would have been about a year after
25 that?

1 A. Yes.

2 Q. Did you know the people that were
3 indicted?

4 A. Yes.

5 Q. After they were indicted, did you have any
6 conversations with any of those people?

7 A. No.

8 Q. None?

9 A. I wasn't in the same facility as them at
10 that time.

11 Q. What about later? Were you transferred to
12 other facilities?

13 A. Yeah, I was transferred to other
14 facilities, but I was never with them.

15 Q. Not one of the defendants?

16 A. Not one.

17 Q. Have you had an opportunity to look at any
18 of the discovery in this case?

19 A. No.

20 Q. Now, when we use the word "discovery," do
21 you understand what that means?

22 A. Yes, I said.

23 Q. I'm sure you do.

24 A. Yes, I do.

25 Q. Would you explain to the jury what

1 discovery is, in your own words?

2 A. In my own words, it's the evidence
3 presented in the case.

4 Q. Sure. We're talking about FBI
5 investigative reports, yes?

6 A. Yes.

7 Q. Witness statements?

8 A. Yes.

9 Q. Reports of interviews of witnesses?

10 A. Yes.

11 Q. Lab reports? That sort of thing. That
12 would all be the discovery?

13 A. Okay. Yes.

14 Q. Mr. Rubio, have you had the opportunity to
15 look at any of the discovery in this case?

16 A. No.

17 Q. You hesitated just a little with me, and
18 that's fine. I'm assuming you're thinking and
19 making sure you remember everything.

20 A. Yes.

21 Q. But are you sure you haven't seen any of
22 the discovery in this case?

23 A. No, I haven't.

24 Q. You were interviewed by an FBI agent, a
25 female agent, by the name of Nancy Stemo. Do you

1 know that agent?

2 A. Yes.

3 Q. And that would have been recently, within
4 the last few days?

5 A. Yes.

6 Q. Do you remember that interview?

7 A. Within the last few days?

8 Q. Yes, sir.

9 A. No.

10 Q. Did you meet with Agent Stemo on January
11 24, 2018?

12 A. No.

13 Q. No. When was the last time you met with
14 Agent Stemo?

15 A. I don't know.

16 MR. JEWKES: May I approach the
17 Government, Your Honor?

18 THE COURT: You may.

19 BY MR. JEWKES:

20 Q. Okay, Mr. Rubio, we're talking about
21 January 29. I'm sorry, January 24. Did you have a
22 meeting with Agent Stemo?

23 A. I don't know who that is.

24 MR. JEWKES: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 A. 2018? I guess I don't know the name of
3 the agent.

4 BY MR. JEWKES:

5 Q. Have you refreshed your memory?

6 A. Yes.

7 Q. All right, Mr. Rubio, going back to this
8 interview that you had with a female FBI agent --

9 A. Yes.

10 Q. -- did you tell that agent -- provide some
11 information about some paperwork in regard to the
12 Javier Molina homicide?

13 A. Yes.

14 Q. You claim now that there was some kind of
15 paperwork?

16 MR. MAYNARD: I have to object. I'm not
17 sure if this is on personal knowledge.

18 MR. JEWKES: I'll clarify.

19 THE COURT: Go ahead.

20 BY MR. JEWKES:

21 Q. Mr. Rubio, did you actually see any type
22 of paperwork?

23 A. I seen some of it. I don't know if it was
24 legitimate paperwork, but I seen some, yes.

25 Q. Okay. You seem to have a question in your

1 mind as to whether or not it was legitimate.

2 A. Yes.

3 Q. Why do you say that?

4 A. Because it was provided by another inmate.

5 Q. Who was the inmate that provided it?

6 MS. DUNCAN: Your Honor, I'm going to
7 object.

8 (Inaudible.)

9 THE COURT: We need one. We're getting a
10 couple of lawyers objecting, so just one.

11 MR. LOWRY: Your Honor, may we approach?

12 THE COURT: Well, he can ask this
13 question, just who provided the paperwork to him, if
14 he saw it.

15 And why don't you specify it that clearly,
16 Mr. Jewkes, that -- who handed him the paperwork?

17 MR. JEWKES: I will.

18 BY MR. JEWKES:

19 Q. Who handed you the paperwork?

20 A. Ronald Sanchez.

21 Q. Now, this paperwork -- did it have
22 anything to do with Javier Molina?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Nothing?

2 A. No. The paperwork that had to do with
3 Javier Molina was handed to me by Jesse Sedillo in
4 2013.

5 Q. 2013?

6 A. Yes.

7 Q. What did the paperwork look like?

8 A. I briefly read it. It was a statement
9 made by Javier Molina to the Las Cruces Police
10 Department.

11 Q. Let me ask you this. First of all, what
12 size was it? Was it 8-and-a-half-by-11? Smaller
13 than that?

14 A. I didn't measure it. Looked like a
15 regular sheet of paper to me.

16 Q. How many sheets of paper?

17 A. I'm not sure. It was a stack of paper,
18 maybe 15, 20 sheets.

19 Q. Fifteen or twenty sheets?

20 A. Yes.

21 Q. All pertaining to the same subject?

22 A. No. It was interviews that they made with
23 him and other people.

24 Q. Was it typewritten?

25 A. Yes.

1 Q. Did it look like whether or not it was on
2 the official police report form?

3 A. It looked like it.

4 Q. Did you read it?

5 A. I read some of it. I skimmed through it.

6 Q. Did it have any type of city or state logo
7 or police logo on it?

8 A. No. It had a case number on it.

9 Q. This was going back years ago; correct?

10 A. Yes.

11 Q. Whatever happened to that paperwork? Do
12 you know where it is now?

13 A. No. The person who showed it to me
14 supposedly flushed it down the toilet. I gave it
15 back to him.

16 Q. Did you read it?

17 A. Yes, I skimmed through it.

18 Q. Mr. Rubio, have you seen any of these
19 tablets that some of the defendants have?

20 A. No.

21 Q. You have not?

22 A. No.

23 Q. Regarding your parole status, whom with
24 the Government have you spoken to about your parole?
25 I'm talking about at this table, over with the FBI.

1 A. Mr. Casey. Mr. Casey. Bryan Casey.

2 Q. Acee?

3 A. Acee.

4 Q. Bryan Acee. Okay. What did you ask
5 Mr. Acee, Agent Acee, to do for you?

6 A. If he can speak on my behalf on my parole
7 hearing.

8 Q. And that would be in 2026?

9 A. Yes, sir.

10 Q. You can get a hearing before then, can't
11 you?

12 A. No, I can't.

13 Q. Because you're doing a life sentence?

14 A. Yes. I have to do 30 years.

15 Q. How much time have you done?

16 A. Twenty-four.

17 Q. Twenty-four. How did you come to earn the
18 special privileges as far as your wife being able to
19 spend some time with you? That's unusual, is it?

20 A. No. No, it's not. You just earn
21 privileges through advancing in the level system and
22 good behavior.

23 Q. Did you get any special privileges once
24 you agreed approximately a year ago, or however long
25 ago it was, to become a cooperating witness?

1 A. I was put in a Level 6 facility. I was
2 removed from a Level 4 facility. I was still given
3 my Level 4 privileges when I was put in a Level 6
4 facility.

5 Q. Okay. So once you decided to become a
6 cooperator and to let these people know you were
7 going to cooperate, it changed your status. Is that
8 correct, or did I misunderstand you?

9 A. No, I was in a Level 4 facility during the
10 time. I was taken to a Level 6 facility because my
11 life was -- supposedly my life was in danger because
12 Mr. Baca put a hit on me.

13 MR. LOWRY: Objection, Your Honor. Can we
14 move to strike?

15 THE COURT: And why?

16 MR. LOWRY: Hearsay.

17 MR. JEWKES: May I respond, Your Honor?

18 THE COURT: Well, if he knows that a hit
19 was put on him, then I'll allow it. Go ahead.

20 MR. JEWKES: I was going to say it was
21 also nonresponsive to the question I asked, Your
22 Honor.

23 THE COURT: Well, it's your question. So
24 if it's nonresponsive, I'll strike the answer and
25 the jury will disregard the witness' answer.

1 MR. JEWKES: Thank you, Your Honor.

2 BY MR. JEWKES:

3 Q. All right, Mr. Rubio, what -- you were
4 voted, according to what you told us, the leader of
5 the green pod?

6 A. Yes.

7 Q. Okay. And that's at Southern New Mexico;
8 correct?

9 A. Yes.

10 Q. When did you decide after that that you no
11 longer wanted to be a leader, wanted to be part of
12 the group?

13 A. Not long after.

14 Q. You decided to enter the program? You
15 know which program I'm talking about?

16 A. What program?

17 Q. Where you leave SNM.

18 A. Yeah, but I done that last year.

19 Q. Last year?

20 A. Yes. That program didn't exist at that
21 time.

22 Q. What's the name of the program? The
23 R-what? RPP?

24 A. RPP.

25 Q. RPP?

1 A. Yes.

2 Q. I thought the RPP had been around for
3 quite a few years, Mr. Rubio.

4 A. I wasn't aware of it.

5 Q. You didn't know about it?

6 A. I wasn't aware of it.

7 Q. It could have been in existence, but
8 you --

9 A. It could have been in existence, but I
10 wasn't aware of it at that time.

11 MR. JEWKES: May I have a moment, Your
12 Honor?

13 THE COURT: You may.

14 MR. JEWKES: Pass the witness, Your Honor.

15 THE COURT: Thank you, Mr. Jewkes.

16 Mr. Lowry, do you want to go next?

17 CROSS-EXAMINATION

18 BY MR. LOWRY:

19 Q. Good afternoon, Mr. Rubio. You spoke on
20 direct about not being happy with Mr. Baca's
21 leadership when he was at Southern.

22 A. Yes.

23 Q. When you were at Southern, did you know a
24 gentleman named Jeffrey Madrid?

25 A. Yes.

1 Q. Stoner?

2 A. Yes.

3 Q. And what was the relationship like between
4 Mr. Madrid and Mr. Stoner? It was antagonistic,
5 wasn't it?

6 A. Between who?

7 Q. Mr. Baca and Mr. Stoner.

8 A. I'm not sure if they actually got along or
9 not.

10 Q. In fact, the folks at Southern wanted Mr.
11 Baca to kill Mr. Stoner because he was
12 disrespectful; isn't that true?

13 A. Not that I know of.

14 Q. Not that you know of. Were you aware that
15 the people at Southern kited Mr. Baca out?

16 A. No.

17 Q. You weren't aware of that. You just
18 weren't happy with Mr. Baca because he didn't follow
19 the rules?

20 A. Yeah.

21 Q. And he gave passes to people that went to
22 PC?

23 A. Yes.

24 Q. And that wasn't a good thing, in your
25 view?

1 A. No.

2 Q. And by giving a pass to somebody that went
3 to PC, he said he'd overlook that supposed
4 transgression against the SNM?

5 A. Yes.

6 Q. You talked about the drug use at the
7 prison. Is it fair to say that you used heroin?

8 A. Yes, I have.

9 Q. How often?

10 A. I've used it. I mean, I was a drug addict
11 for maybe a couple of years in the '90s where I used
12 pretty much daily. After that, I kind of stopped
13 doing drugs.

14 Q. Altogether?

15 A. Yes.

16 Q. Before that, did you use everything you
17 came across?

18 A. Yes.

19 Q. Just to pass the time?

20 A. Yes.

21 Q. Because it's not a glamorous place, is it?

22 A. Right.

23 Q. Prison?

24 A. Yes.

25 Q. You know, speaking of that, can we bring

1 up Government's Exhibit 13?

2 Mr. Beck was talking about where you
3 resided. You lived in HU 1 A, that building down
4 right here; correct?

5 A. Yes.

6 Q. And when you were talking about going to
7 the rec yard, you were talking about going over to
8 these cages right here; correct?

9 A. Yes.

10 Q. And you literally had to sit in these
11 cages like a dog run, like a kennel?

12 A. Yes.

13 Q. And if we could go to Government's Exhibit
14 162.

15 This is a fair example of the floor plan
16 of your housing unit, isn't it?

17 A. Yes.

18 Q. And just to be clear, this would be the
19 blue pod here?

20 A. Yes.

21 Q. And this was the yellow pod?

22 A. Yes.

23 Q. And this would be the green pod where you
24 lived; correct?

25 A. Yes.

1 Q. And I believe you said that you were a
2 llavero?

3 A. Yes.

4 Q. For the green pod?

5 A. Yes.

6 Q. And you'd order hits?

7 A. Yes.

8 Q. Why did that trouble you that Mr. Baca
9 would let people go into protective custody?

10 A. Because he favored certain people. He
11 favored people who took his side rather than
12 everybody living by the same rules.

13 Q. So he would let some people just PC out?

14 A. Yeah. I mean, if it benefited him, yes.

15 Q. Now, I want to talk to you about your
16 relationship with the prosecution in this case. Did
17 you understand, when the FBI came to you, that they
18 said, "Please cooperate with us and if you
19 cooperate, we will not charge you"?

20 A. Those weren't the exact words. I was
21 asked to cooperate.

22 Q. And you were told in exchange for your
23 cooperation, you wouldn't be prosecuted?

24 A. Yes. Not in exchange, but they just told
25 me I wasn't going to be prosecuted.

1 Q. Okay. So you just talked to them because
2 you wanted to?

3 A. Because I wanted out of the SNM.

4 Q. And you wanted out of Southern?

5 A. No, out of the SNM Gang.

6 Q. But you also wanted them to help you
7 reduce your state sentence?

8 A. Not reduce my sentence.

9 Q. Well, how often do people get paroled in
10 New Mexico on a murder charge?

11 A. I don't know.

12 Q. And your sentence isn't just the 30 years
13 for the murder. You got life plus 18 years in your
14 sentence, didn't you?

15 A. Yes.

16 Q. So even if you got paroled in 2024, as you
17 testified, you'd still have to do the 18-year
18 sentence?

19 A. Yes.

20 Q. So what benefit does it get you to get
21 parole granted if you still have 18 years to serve?

22 A. Well, if I parole from my life sentence, I
23 do my -- I start serving my 18 years.

24 Q. Right. So if you get parole in 2024, you
25 still have 18 to go.

1 A. Yes.

2 Q. Did you want the United States to help
3 neutralize that 18 years?

4 A. No.

5 Q. You wanted to do that 18 years.

6 A. Yes. I'm going to do my time, yes.

7 Q. But when you were living in Level 6, you
8 got the benefits, you got all the calls you wanted?

9 A. Yes.

10 Q. You got contact visits?

11 A. Yes.

12 Q. You got to go to the pizza party?

13 A. Yes.

14 Q. And that was a social engagement?

15 A. Yes.

16 Q. And did you see Special Agent Acee there?

17 A. Yes.

18 Q. Did you get to talk to him at that?

19 A. Yes.

20 Q. How long was he there?

21 A. I'm not sure.

22 Q. Who else was there in terms of the
23 correctional officials?

24 A. I don't remember.

25 Q. But one of the benefits they gave you at

1 Level 6 was unmonitored contact visits with your
2 wife; correct?

3 A. Yes.

4 MR. LOWRY: May we approach, Your Honor,
5 just briefly?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. LOWRY: Your Honor, I was going to
10 queue up the video, but I don't know how the system
11 works, and I don't know if we can stipulate to its
12 admissibility or just play it.

13 MS. ARMIJO: I believe they want to play
14 the sex video. It's a 22-second clip.

15 MR. LOWRY: It's faded. It's got the
16 blocked --

17 THE COURT: I think I saw it at the
18 hearing. It's very -- it's a piece of evidence?

19 MR. LOWRY: Yes, it is, Your Honor.

20 MR. BECK: So it was just handed to me on
21 a thumb drive, and that's fine.

22 MR. LOWRY: It's blocked out.

23 MR. BECK: I think at this point he's
24 admitted to sex. He's admitted the granddaughter's
25 in the room.

1 THE COURT: Well, if you make it a 403,
2 I'll go ahead and let the defendants play the tape.

3 MR. BECK: So under Rule 403, I think that
4 the evidentiary value is --

5 THE COURT: I'll let them play it.

6 MS. JACKS: Do you guys want to watch it
7 first? It's on the thumb drive. It's labeled
8 "Rubio."

9 MR. BECK: We don't need to see it yet.

10 MR. LOWRY: Can we break and do lunch and
11 clarify over the lunch hour?

12 THE COURT: I don't think there is
13 anything to clarify.

14 MR. BECK: I think the Court ruled.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: Mr. Lowry.

18 MR. LOWRY: Thank you, Your Honor.

19 BY MR. LOWRY:

20 Q. Mr. Rubio, I'm going to show you a little
21 video clip, and I'm going to ask you if you can
22 identify it, with the Court's permission.

23 THE COURT: You may.

24 MR. BECK: Your Honor, I'm not sure it was
25 ever entered into evidence.

1 THE COURT: Do you want to introduce it
2 into evidence?

3 MR. LOWRY: I am, Your Honor.

4 THE COURT: What's the exhibit number?

5 MR. LOWRY: It is Exhibit Number AM 1.

6 THE COURT: AM 1. I assume this
7 defendants? All right.

8 MR. LOWRY: We'd move to admit Defendants'
9 AM 1.

10 THE COURT: AM 1 will be admitted into
11 evidence.

12 (Defendants' Exhibit AM 1 admitted.)

13 MR. BECK: Your Honor, we object under
14 Rule 403.

15 THE COURT: I understand. It will be
16 admitted.

17 BY MR. LOWRY:

18 Q. Can you identify the person in the yellow?

19 A. That's me.

20 Q. And who is that with you?

21 A. My wife.

22 Q. Okay. And where was your granddaughter?

23 A. Sitting down on the chair.

24 Q. That's her foot?

25 A. Yes.

1 Q. Is it normal for inmates at Level 6 to get
2 unmonitored visits with family members?

3 A. No.

4 MR. LOWRY: No further questions, Your
5 Honor.

6 THE COURT: All right. Thank you, Mr.
7 Lowry.

8 Ms. Fox-Young.

9 MS. FOX-YOUNG: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. FOX-YOUNG:

12 Q. Good afternoon, Mr. Rubio. In the
13 beginning of your testimony, I think you said that
14 Tony Perez brought you into the SNM; is that right?

15 A. Yes.

16 Q. Not Rudy Perez; right?

17 A. Not Rudy.

18 Q. Okay. Thank you. You talked a little bit
19 about an extensive period of time you spent in
20 solitary confinement.

21 A. Yes.

22 Q. Can you tell me what that was like?

23 A. Basically I'm in my room 23 hours a day.
24 I have only my state-issued clothing and my hygiene
25 items.

1 Q. And how big was the room?

2 A. I'm not sure. Maybe ten feet by eight
3 feet, maybe.

4 Q. And day-to-day, on a daily basis, did you
5 see any other people?

6 A. No. I mean, everybody is locked in their
7 rooms.

8 Q. How did you get food?

9 A. The CO brings it, puts it in through the
10 food slot.

11 Q. Did you see the CO?

12 A. Yeah.

13 Q. Just through the slot?

14 A. Yeah.

15 Q. And you'd eat in your room?

16 A. Yes.

17 Q. And you didn't otherwise communicate with
18 anybody?

19 A. You come out to rec by yourself. They put
20 you in the rec cage by yourself. They take you to
21 the shower by yourself, and put you back in the
22 room.

23 Q. Sometimes it's possible to communicate
24 just with the person who is in a cell next to you;
25 right? Through the vent?

1 A. Yes.

2 Q. But other than that, you can't communicate
3 with other inmates?

4 A. No.

5 Q. There are no windows; right?

6 A. There is the window in the front and the
7 window in the back, but you can't see out the window
8 in the back. Sunlight comes in, and that's it.

9 Q. You talked a little bit about the
10 consequences of interfering with a hit; right?

11 A. Yes.

12 Q. And you said that's murder; you'd be
13 murdered?

14 A. Yes.

15 Q. You know that from personal experience?

16 A. Yes.

17 MS. FOX-YOUNG: No further questions, Your
18 Honor.

19 THE COURT: Thank you, Ms. Fox-Young.

20 Mr. Beck, do you have redirect?

21 MR. BECK: No, Your Honor. The witness
22 may be excused.

23 THE COURT: All right.

24 Mr. Rubio, you may step down.

25 Is there any reason that Mr. Rubio could

1 not be excused from the proceedings, Mr. Beck?

2 MR. BECK: Not from the Government, Your
3 Honor.

4 THE COURT: Can he be excused?

5 MS. FOX-YOUNG: Yes, Your Honor.

6 THE COURT: Everybody in agreement with
7 that?

8 MS. JACKS: Your Honor, we'd like to keep
9 him subject to recall.

10 THE COURT: All right.

11 You'll need to stay outside of the
12 courtroom, but you're subject to recall. Thank you
13 for your testimony.

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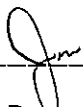
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 12th day of March, 2018.

13
14 
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